IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2280 OF 2004

Purshottam Nanji Tank ..
Petitioner.
Vs.
Municipal Corporation of Greater Mumbai ..Respondent.

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Dr. V.V.Tulzapurkar with Mr. Shailesh Shah i/b M/s. Dalal & Co. for the petitioner.
Mr. K.K. Singhavi with Ms. N.Y. Sanglikar for the respondent.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

29th November, 2004.

P.C. :

1. The challenge in these proceedings is to a notice of demolition issued by the Municipal Corporation under Section 488 of the Mumbai Municipal Corporation Act, 1888 on 21st May, 2003. The claim of the petitioner is based upon a plea of adverse possession against the original owner.

2. Under the Town Planning Scheme (TPS III- First Variation - Final) which came into force on 4th February, 1985 final Plot 657 stands reserved for a maternity home. Section 88 of the Maharashtra Regional Town Planning Act, 1966 provides that when a final scheme comes into force, all lands required by the

planning authority shall, unless it is otherwise determined in the scheme, vest absolutely in the planning authority free from all encumbrances and all rights in the original plots which have been reconstituted shall determine and the reconstituted plots become subject to rights settled by the arbitrator. In pursuance of the provisions of the Act, the vesting of final Plot 657 in the Respondent Corporation is complete, free of all encumbrances. Notices under Section 89 and 90 are stated, in the affidavit in reply of the Municipal Corporation, to have been issued on 19th September, 1991 and 25thSeptember, 1991. The subsequent notices under Section 488 of the Corporation Act are in continuation of the earlier notices under Section 89 and 90 of the Maharashtra Regional Town Planning Act, 1966.

3. The petitioner's deceased mother is stated to have instituted a suit in the City Civil Court (Suit 9094 of 1991) which was dismissed. The appeal is stated to have abated on 2nd May, 2003. The Municipal Corporation has also stated in its affidavit in reply that the petitioner had also instituted a suit (2347 of 2003) in the City Civil Court in which a Notice of Motion for the grant of interim relief was dismissed on 21st July, 2003.

4. Counsel appearing on behalf of the petitioner urges that the suit before the Civil Court was not maintainable. Be that as it may, we are clearly of the view that the petitioner clearly has no case against the Municipal Corporation which is entitled and, in fact duty bound to enforce the provisions of the Town Planning Scheme once it has come into force. Final Plot 657 is vested in the Corporation free of encumbrances and is reserved for a maternity home. The petitioner has instituted a suit against the original owner based on a plea of adverse possession. On 1st October, 1996 a learned Single Judge of this Court granted interim relief to the plaintiffs therein in the Notice of Motion. However, the learned Single Judge clarified in the following terms that this would not affect the rights of the planning authority to enforce the provisions of the Town Planning Scheme :

> "It however, requires to be clarified and it has been brought to the notice of the court that the Town Planning Scheme has become final and the plot in dispute has been affected under the said Town Planning Scheme. The concerned authorities for that matter, even the parties will be entitled to proceed ahead with action in accordance with the Town Planning Scheme and this order will not operate as an impediment to the same."

It also appears from the annexures to these proceedings that the

original owner one A.F.Rodriques had instituted proceedings under Article 226 of the Constitution in which on 17th August, 1981 a learned Single Judge of this Court had directed that the aforesaid owner would surrender original plot 657 upon the Town Planning Scheme being sanctioned and that within a period of one year from that date the Corporation shall hand over vacant and peaceful possession of Final Plot 355 after removing the structures thereon, to the original owner. In subsequent proceedings (Writ Petition 2715 of 1989) a Division Bench of this Court had on 19th March, 1991 reiterated the directions contained in the earlier order of M. L. Pendse, J. dated 17th August, 1981. In so far as the petitioner is concerned, the suit which has been instituted in this Court on the basis of the plea of adverse possession is yet to be tried and adjudicated upon on merits. In the interim proceedings which were resorted to in the said suit, the learned Single Judge specifically clarified that the Municipal Corporation as the planning authority will be entitled to take action in accordance with the Town Planning Scheme and that the order of the Court will not operate as an impediment. The petitioner, in our view, is not entitled to obstruct the due enforcement of the Town Planning Scheme in accordance with the law. The Municipal Corporation is entirely justified in

enforcing the provisions of the scheme and is under an obligation to do so. Final Plot 657 is vested in the Municipal Corporation. Public interest demands the enforcement of the scheme. The relief which has been sought in the petition cannot be granted. The petition is, accordingly, dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.